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**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON**

**ASTORIA DOWNTOWN MARKET, et
al.,**

Case No.: 3:18-cv-01367-AC

Plaintiffs,

v.

**PLAINTIFFS' MOTION FOR AWARD
OF ATTORNEY'S FEES AND COSTS,
AND TO TAX COSTS**

UNITED STATES OF AMERICA,

Defendant.

MOTION FOR ATTORNEY'S FEES AND COSTS

Plaintiffs, Astoria Downtown Market, and Samuel McDaniel, by and through their undersigned counsel, hereby move this Court pursuant to Fed. R. Civ. P. 54(d), 28 U.S.C. §2412(d) and 5 U.S.C. §504 et seq., for an award of attorney's fees and costs.

1. This action concerned a Final Agency Decision issued by the Defendant through its Department of Agriculture, Food and Nutrition Service (FNS), on June 20th, 2018 in

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which the Defendant permanently denied the Plaintiffs participation in the Supplemental Nutrition Assistance Program (SNAP).

2. The basis for the Department's permanent denial of the Plaintiffs' application was that he lacked sufficient business integrity under 7 C.F.R. §278.1(b)(3) based upon Plaintiff McDaniel's 2007 conviction for Unlawful Possession of Psilocin, Unlawful Delivery of Psilocin, and Unlawful Delivery of Marijuana.
3. On December 16th, 2019, the Honorable John V. Acosta, United States Magistrate Judge, entered his Findings & Recommendation (Doc. 47) on the parties' competing motions for summary judgment. In pertinent part, Magistrate Judge Acosta found in favor of the Plaintiffs:

“McDaniel's Convictions do not fall within the scope of 7 C.F.R. §278.1(b)(3)(i)(A) because a conviction for delivery of controlled substances is not a fraud-like crime related to Plaintiffs' business integrity. Therefore, the Agency's permanent denial under the cross-referenced Section 278.1(k)(3)(i) was not in accordance with law and fails the arbitrary and capricious standard.” Page 16.

4. Subsequently, this Court entered an Order (Doc. 49) which adopted the Magistrate Judge's findings of fact, conclusions of law and recommendations. Judgment was subsequently entered (Doc. 50) in favor of the Plaintiffs.
5. Without a doubt, the Plaintiffs are the prevailing parties in this matter. The one-count Complaint filed by the Plaintiffs (Doc. 1) specifically sought the reversal of the permanent denial of participation in the SNAP program, and attorney's fees and court costs. Page 9. The Defendant's position was diametrically opposed to such relief, and as a result, the entire matter boiled down to whether or not the permanent SNAP application denial would be upheld or reversed.

6. Mr. McDaniel's net worth is below the threshold established by 5 U.S.C. §504(b)(1)(B). A copy of Mr. McDaniel's Declaration is attached hereto as Exhibit A.
7. The Defendant's administrative and litigation positions were not substantially justified, nor do any special circumstances exist which would make an award of fees and costs unjust.
8. In fact, given that the Plaintiffs cannot recover monetary damages pursuant to 7 U.S.C. §2023, and given that the Plaintiffs have lost considerable revenue and business opportunities as a result of the Department's application denial, denying the Plaintiffs their attorneys' fees and costs would be unjust.
9. As such, pursuant to the Equal Access to Justice Act, 28 U.S.C. §2412(d), and the Administrative Practices Act, 5 U.S.C. §504 et seq., the Plaintiffs are entitled to an award of reasonable attorneys' fees and non-taxable costs.
10. Likewise, pursuant to Federal Rule of Civil Procedure 54(d)(1), the Plaintiffs are also entitled to costs.
11. Metropolitan Law Group and Robert E. Repp, Esq., represented the Plaintiffs in this matter, and Metropolitan Law Group represented the Plaintiffs during the Administrative Proceedings.
12. The Plaintiffs respectfully request that this Court award \$22,435.00 in attorney's fees and \$1,482.22 in costs. A copy of the Declaration of Andrew Z. Tapp, Esq. is attached hereto as Exhibit B.

WHEREFORE, the Plaintiffs, Astoria Downtown Market, and Samuel McDaniel respectfully request this Honorable Court enter an Order granting this motion and awarding the Plaintiffs \$22,435.00 in reasonable attorney's fees and \$1,482.22 in costs, in addition to such other

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relief that this Court deems just and appropriate.

Respectfully submitted this 27th day of March, 2020.

/s/ Andrew Z. Tapp
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 27, 2020, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, and a true and correct copy of foregoing pleading was sent via Email to counsel for Defendant:

Alison Milne, Esq.
Alison.Milne@usdoj.gov

Andrew Z. Tapp
Andrew Z. Tapp, Esq.